IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

JUDGMENT

Smt.Kamla Devi & anr. Vs. Kailash Chandra & ors.

S.B.CIVIL MISC. APPEAL NO.614/1994

Against the award dated 23.08.1994 made by the Motor Accidents Claims Tribunal, Udaipur in Claim Case No.443/1990.

Date of Judgment : 23rd July 2007

PRESENT

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.Deelip Kawadia for the appellants
Mr. R.K.Mehta for the respondent No. 3

BY THE COURT:

This appeal under Section 173 of the Motor Vehicles Act, 1988 has been preferred by the substituted claimant-appellants against the award dated 23.08.1994 made by the Motor Accidents Claims Tribunal, Udaipur in Claim Case No.443/1990 seeking enhancement over the amount of Rs.85,000/- together with interest at the rate of 12% per annum from the date of filing of claim application that has been awarded as compensation towards loss of estate due to the injuries sustained in a vehicular accident by the original claimant Shanker Lal, husband of appellant No.1 and father of appellants Nos.2 & 3. Appellant No.3 has expired during

pendency of this appeal and his name has been deleted at the request of the surviving appellants.

Appellants have assailed the award in question as being too low and inadequate particularly on the submissions that the accident victim Shanker Lal sustained multiple injuries leading to amputation of a leg and paralysis of other limbs and remained confined to the bed for about 39 months before he expired due to such injuries. According to the appellants, the Tribunal has been in error in awarding meagre amount as compensation only towards medical expenditure and loss of estate; and in not awarding adequate compensation towards loss of contribution and non-pecuniary loss suffered by the claimants.

Background facts are that on 11.07.1990 at about 1:15 p.m. near octroi post on Udaipur-Chittor road, the victim Shanker Lal, while proceeding towards Zinc Smelter on his scooter bearing registration No.RNY 2764 sustained multiple injuries on being hit and dragged along by oncoming jeep bearing registration No.RSJ 1557. Narrating the incident, the injured claimant Shanker Lal filed the claim application on 01.11.1990 seeking compensation against the driver, owner and insurer of the jeep aforesaid and submitted that the accident was caused by rash driving of the jeep by the non-applicant No.1 whereby he was hit and dragged with the jeep

for about 15-20 ft.; that his both legs were crushed beneath the wheels of the jeep and leg bones were broken into pieces, his arm was also fractured and he sustained several other injuries on face, head and other parts of the body; that he fell unconscious and was taken to Udaipur Hospital in the same jeep; the doctors opined for amputation of both his legs and looking to the serious condition, he was taken to Ahmedabad in a special van on stretcher and was admitted at Deepak Patel Orthopaedic Nursing Home; that he had already undergone four operations and two more were to be performed.

The claimant gave out the account of substantial expenditure already incurred on his treatment, transportation, and attendants; and of considerable expenditure to be incurred in future. The claimant pointed out that he was earning about Rs.5,000/- per month as a contractor having two trucks; that his business was ruined and he could not execute the contract works and had already suffered substantial loss of income; and that he would not be able to earn to his capacity in future. Thus, stating various pecuniary and non-pecuniary losses, the claimant sought compensation in the sum of Rs.10,31,200/-.

The non-applicants Nos. 1 and 2, driver and owner of the aforesaid jeep RSJ 1557, stated total denial of occurrence; and alleged that the accident was caused by some other

vehicle but was imputed upon the non-applicants for their jeep passing-by; and that liability, if any, was that of the insurer non-applicant No.3. The non-applicant No.3 Insurance Company denied its being the insurer of the jeep in question in the initial reply filed on 06.05.1991 but by way of amendment application filed on 03.06.1991 admitted that the jeep in question was insured with it for the period 18.05.1990 to 17.05.1991. While stating general denial of the claim averments and alleging that the accident occurred for the claimant having hit against the jeep for his own negligence, the Insurance Company also alleged want of driving licence with the claimant and jeep driver and asserted that insurer of the scooter was a necessary party. It was also averred that the Insurance Company would keep its right reserved for amendment in the reply on stating of correct policy number. From the record, it appears that on 10.08.1993 the insurer filed an amended reply after the issues had already been framed and the claimant had already been examined. Be that as it may, the issues framed on 04.09.1991 for determination of the questions involved in this case read as under:-

> "1- आया दिनांक 11-7-90 को वि0 नं0 1 श्री कैलाशचन्द्र के द्वारा वाहन संख्या RSJ 1557 को गफलत व लापरवाही से चलाने के कारण श्री शंकर लाल दुर्घटनाग्रस्त हुवा और उसके शरीर पर साधारण व गंभीर चोटें पहुंची ? -प्रार्थी

2- आया प्रार्थी क्लेम में बताई गई राशि रूपया 10,31,400.00 या अन्य कोई राशि प्रतिकार में विपक्षीगण से पाने का अधिकारी है ? यदि हां तो कितनी व किस किस से ?- प्रार्थी

3- आया विपक्षी बीमा कम्पनी द्वारा जवाब दावे में उठाई गई आपत्तियों के आधार पर विपक्षी बीमा कम्पनी का कोई उतरदायित्व नहीं है ?- वि.नं. 3

4- दादरसी ?"

On an application moved on behalf of the claimant, the Tribunal permitted him to be examined on Commission; and the Commissioner, accordingly, recorded his statement on 12.05.1993 and submitted the same to the Tribunal on 21.05.1993.

On 19.10.1993, an application was moved before the Tribunal (at page A16/5 of the record) by the appellants, wife and two sons of the claimant, stating that the injured claimant Shanker Lal remained under treatment since after the accident and his leg was required to be amputated and he was unable to move and ultimately because of the accident he died on 19.09.1993. The applicants sought substitution as claimants with the submissions that they were dependent on the income of the deceased Shanker Lal; and were entitled to continue the proceedings in the claim application having succeeded to his estate. The Tribunal passed an order on 05.01.1994 allowing the application for substitution to the extent of estate and ordered filing of amended cause title. On 06.04.1994, the

substituted claimants filed amended cause title; and after examining AW-2 Jaspreet Singh, an alleged eyewitness to the incident and AW-3 Raj Kumar, son of the original claimant, closed their evidence. On the next date, the Tribunal closed the evidence of the non-applicants and proceeded to make the award on 23.08.1994 after hearing the parties.

With reference to the evidence on record, the Tribunal held in issue No.1 that the accident occurred for rash and negligent driving of the jeep. Taking up issues Nos.2 and 3 together, the Tribunal observed that the hyper-technical objection taken by the insurer was not proved by evidence and held the insurer liable for compensation. The Tribunal thereafter considered the evidence on record particularly in relation to the bodily injuries sustained by the claimant and amputation of his leg and substantial expenditure incurred on treatment. The Tribunal also referred to the sources of income of the victim Shanker Lal as a handling agent and as a transporter having two trucks; and with reference to the documentary evidence like work orders Ex.118 to Ex.123 and tax deduction certificates Ex.125 to Ex.128 accepted his monthly income at Rs.5,000/-.The Tribunal, then, observed that it could not be accepted that after the accident (on 11.07.1990) till his demise on 19.09.1993, the victim was capable of carrying on his business or that he earned any

income; that both his legs were severely injured; that he suffered paralysis and amputation and ultimately died; and that from the certificates Ex.1 to Ex.9 it was clear that the victim was not in a position to move at all. After this much of the discussion, the Tribunal referred to a decision reported in 1984 ACJ 645 and observed that the victim's heirs were entitled to compensation to the extent of loss of estate and were entitled to recover the amount spent on treatment and that of loss of income. Then, the Tribunal observed that on the principles of loss of estate, it was proper to award Rs.35,000/- towards expenditure on treatment, transportation, diets and attendants; and Rs.50,000/- towards loss of income. In this manner, the Tribunal awarded compensation in the sum of Rs.85,000/- and allowed interest at the rate of 12% per annum from the date of filing of claim application after adjustment of the amount awarded under Section 140 of the Motor Vehicles Act with stipulation of penal interest at the rate of 15% per annum for non-payment within two months.

Assailing the award aforesaid, learned counsel for the claimant-appellants submitted that the Tribunal has failed to consider that the deceased remained confined to bed and under treatment for over 39 months from the date of accident till his demise and the Tribunal has been in error in not awarding adequate compensation to the claimants towards

loss of dependency and non-pecuniary loss. Learned counsel referred to and relied upon the decision of this Court in Habibnur Khan and others Vs. Govind Singh and another: MACD 2006 (1) (Raj.) 59 and that of Hon'ble Andhra Pradesh High Court in N.R.Patel & Co., Secunderabad and others Vs. T.Aperna and others: MACD 2006 (2) (AP) 1027. Learned counsel for the insurer on the other hand submitted that the amount awarded by the Tribunal cannot be said to be low or inadequate; that present one is not a case for recovery of compensation on account of death due to the injuries sustained in the accident; and that towards loss of estate, the Tribunal has awarded amount to the extent it has been proved. Learned counsel referred to the decisions of this Court in Sampati Lal Vs. Hari Singh: 1985 RLW 220; Naseeban and another Vs. Surendra Pal and others: 1995 DNJ (Raj.) 241; L.Rs. of Om Prakash: Smt.Maya and others Vs. Mahendra Pal and others: II (1989) ACC 202; and Neelima Sharma (Smt.) and others Vs. Ramesh Tated and others: 2003 R.A.R. 220 (Raj.) and submitted that after the demise of injured claimant, the appellants are entitled only for the amount towards loss of estate and not beyond.

Submissions made by learned counsel for the parties have been given anxious consideration and entire record has been scanned through.

The Tribunal referred to a part of the facts and circumstances of the case but made the award of compensation in the sum of Rs.85,000/- treating it to be an injury case and substituted claimants being entitled only towards loss of estate. The considerations of the Tribunal read as under:

> "प्रार्थी के कहे कथन के अनुसार उसकी मासिक आय लगभग 5000/- माहवार को इन परिस्थितियों में स्वीकार करता हूँ। दुर्घटना होने के बाद से 19-9-93 मृत्यु के दिवस तक प्रार्थी अपना पूर्ववत व्यवसाय करने में सक्षम था और उसने आय अर्जन की हो इसे कतई स्वीकार नही किया जा सकता। उसके दोनो पैर गंभीर रूप से क्षतिग्रस्त हुवे है, लकवा भी हो गया और पैर भी काटने पड़े है और अंत में मृत्यु भी हो गई। यही नहीं इससे पूर्व डा0 लडडा ने प्रार्थी का परीक्षण कर प्रदर्श -1 से 9 प्रमाण पत्र जारी किये है और उसने स्पष्ट उल्लेख किया है कि प्रार्थी न तो बैठने की स्थिति में है और न ही खडे होने की स्थिति में है फिर चलने फिरने का तो प्रश्न ही पैदा नहीं होता।
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> विनिर्णय 1984 ए0सी0जे0 645 के अनुसार मृतक के वैध उतराधिकारी प्रार्थी मृतक की सम्पदा की सीमा तक क्षतिपूर्ति राशि प्राप्त करने के अधिकारी है और जो खर्चा इलाज पर व उसकी आय क्षति का हुवा है वह प्राप्त करने के अधिकारी है।
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> समस्त परिस्थितियों पर विचार कर मृतक की सम्पदा की क्षति के आधार के सिद्धान्त पर, इलाज पर हुवे खर्च, यात्रा, आहार, एटेण्डेन्ट पर हुवे खर्च आदि पर 35000/- एवं प्रार्थी की मृत्यु होने तक 19-9-93 तक की अवधि की आय क्षति के आधार पर 50,000/- इस प्रकार कुल एक मुश्त राशि 85,000/- (पिच्यासी हजार रूपये) क्षतिपूर्ति राशि दिलाई जाती है जिसकी अदायगी की जिम्मेदारी विपक्षी नं03 यूनाईटेड इण्डिया इन्शोरेन्स कम्पनी की होगी।"

The original claimant had pointed out that he suffered extensive injuries and remained under treatment at Ahmedabad for 2½ months; that he was brought to Udaipur

and then was taken back to Ahmedabad where his leg was required to be amputated; and that he remained hospitalised in all for about 8-10 months. He had also pointed out that he was unable to move with his remaining leg whose strength was gone; that his movements were severely restricted; that his right hand was not working; and that his left hand was also paralysed. There is nothing in his cross-examination to discredit the specific assertion of his being not capable of moving or working at all. Indisputably, on 06.04.1991 left lower limb of the injured claimant was amputated above knee. Then, there is no evidence in rebuttal. The Advocate-Commissioner in his forwarding note dated 21.05.1993 has succinctly stated the overall condition of the injured claimant thus:

> "उपरोक्त अनवान प्रकरण में कमीश्नर मुझ जीवनसिंह पोरवाल ने बयान दिनांक 12/5/93 को लिए जो पेश है। गवाह शंकर लाल का एक पैर कटा हुआ था दुसरा पैर मुड नहीं सकता था एक हाथ में लकवा था दुसरा हाथ भी मुड नहीं सकता है। गवाह उठ बैठ भी नहीं सकता है। इसलिए गवाह के अंगुठे की निशानी करवाई गई ।"

Thus, it cannot be denied that the victim Shanker Lal had not only sustained multiple grievous injuries, he had been in a weak and infirm condition due to after-effects of the injuries with his movements substantially retarded and restricted; and in the ordinary course it could be inferred that injuries were the proximate cause of his death, though no direct medical evidence in this regard is available on record.

However, the question is as to whether the substituted claimants-appellants are entitled for compensation towards their pecuniary and non-pecuniary losses in this claim case?

After the demise of the original claimant, it was definitely available for the present appellants to point it out to the Tribunal that the victim had died due to the injuries sustained in the accident and to seek compensation towards their losses, apart from loss of estate. However, the appellants merely moved a cursory application as noticed earlier, for their substitution as claimants in place of original claimant but never made any attempt to state their case of loss of dependency because of the death of victim due to injuries sustained in the accident. It is true that strict rules of pleadings are not applied to the vehicular accident cases; and the evidence already available on record in the present case even at the time of demise of original claimant was at least indicative of the fact that he had been continuously carrying the after-effects of the injuries; and then, he expired about four months from the date of recording of his statement on 12.05.1993. But, for the purpose of dealing the present one as a death case and thereby considering award of compensation to the substituted claimants towards loss of dependency, it was minimum required of them to take fundamental essential pleadings in that regard.

Learned counsel for the claimants has relied on the decision of this Court in Habibnur Khan's case (supra) wherein this Court has not countenanced awarding of compensation merely in the sum of Rs.50,000/- by the Tribunal to the dependents of a 35 years old vehicular accident victim (original claimant) who died about 11 months after the accident but remained confined to bed since after the accident having suffered paraplegia; and on comprehensive consideration of the material on record, this Court came to the conclusion that the victim died only because of the injuries sustained in the accident and held the dependents entitled for reasonable compensation towards their losses. However, the significant aspect in Habibnur Khan's case was that his heirs and legal representatives not only got themselves substituted in the claim application as claimants but sought permission to amend the claim application as originally made by the victim and sought compensation for the loss occasioned to them due to his death; and prosecuted the claim application accordingly, after the amendment was allowed. In the present case, the substituted claimants have chosen to prosecute only the original claim application as filed by the victim Shanker Lal without taking even basic pleadings for treating it a death case. Habibnur Khan's case (supra) has, therefore, no application to the facts of the present case.

In the case of N.R.Patel & Co. (supra) the original claimant expired during the pendency of the claim application and his legal representatives were impleaded as claimants but it has been observed that it was not in dispute that the injured died due to the injuries sustained in the accident.

The omission on the part of substituted claimants (appellants) to state the present one unambiguously as a death case and to make a claim for loss of economic dependency does not appear to be a mere mistake. The original claimant Shanker Lal did not state his age in the claim application but in the statement recorded on 12.05.1993 stated the same at 59 years. His age has been mentioned at 62 years on the discharge card of the Gujarat Research and Medical Institute, Ahmedabad dated 18.04.1991 (on the reverse of the document Ex.6). The injury report (Ex.3) and X-ray report (Ex.4) made on 11.07.1990 are indicative of a figure towards his age at about "50 years" but that does not appear to be correct when the original claimant stated his age at 59 years on 12.05.1993. In the application for substitution, age of wife of the original claimant has been stated at 55 years. His son Raj Kumar has deposed on 06.05.1994 stating his age at 32 years. Looking to the omission in the claim application and then at the age as stated in the document Ex.8 by his treating hospital at 62 years, it seems that age of the victim was

above 60 years at the time of his death and the substituted claimants, particularly the sons of the victim, were not as such his dependents. In the overall facts and circumstances of the case, the substituted claimants seem to have deliberately chosen not to prosecute the claim as that of a death case. The contention urged on behalf of the claimants now in this appeal to allow them compensation because of demise of the victim due to the injuries sustained in the accident does not appear justified nor appears appropriate to be considered on the facts and in the circumstances of the present case.

However, the question still remains as to whether the amount of compensation awarded by the Tribunal towards loss of estate is adequate? It is not in dispute that after the demise of the injured claimant, his heirs and legal representatives are entitled to recover compensation towards loss of estate that includes the amount spent in treatment of the victim and loss of his income for the period from the date of accident till the date of demise as held by this Court in the decisions relied upon by the learned counsel for the insurer. In the present case, the Tribunal has awarded an amount of Rs.35,000/- towards treatment and related expenditure with reference to the bills proved in evidence in the sum of Rs.29,475/-. In the circumstances of the case, there appears no scope to consider any enhancement on this score.

So far the amount of compensation towards loss of income is concerned, a few relevant facts and factors are required to be taken note of. The injured was essentially earning as handling contractor/transporter and had two trucks with him. According to the statement of the claimant, he was earning Rs.2,000/- from each of the two trucks; and one of the trucks had been sold; and he was not aware about the income from new truck as the same was being plied by his son. From the documentary evidence produced on record, fluctuating sums like Rs.12,335.70 for the month of September 1989, Rs.4,750.00 for the month of October 1989, Rs.7,919.20 and Rs.8,494.00 for the month of November 1989, Rs.7,675.00 for the month of December 1989, and Rs.8,325.00 for the month of January 1990 are shown to have been paid to the victim in the tax deduction forms (Ex.125 to Ex.129). Such certificates could at the most indicate the gross receipts but do not prove net income of the victim because the said were only the payment received by him as contractor from his principal. Such receipts were not of net income because necessary business and other expenditure have to be accounted for. No other proof in the form of business accounts has been adduced. Then, even while going by the statement of the claimant, his net earning was about Rs.4,000/- per month from two trucks; but the entire of the income was also not lost as

the truck was being plied by his son. Then, while assessing just compensation towards loss of income, a component of personal expenditure of the victim is also to be adjusted.

Having regard to the circumstances of the present case, this Court is of opinion that after adjustment of all the relevant factors, loss of estate of the claimant due to loss of earning capacity could be taken at about Rs.2,000/- per month i.e., half of the income stated by him. Thus, the loss for the claimants stands at Rs.2,000/- per month and deserves to be allowed for 39 months in the sum of Rs.78,000/- (2000 x 39).

The Tribunal has awarded compensation towards loss of income in a lump sum of Rs.50,000/- despite taking monthly income of the deceased at Rs.5,000/- and observing that from the date of accident (11.07.1990) till date of demise (19.09.1993) the victim was not capable of working. However, as noticed above, while taking monthly loss at Rs.2,000/-, an amount of Rs.78,000/- deserves to be allowed towards the component of loss of income for 39 months. The award in question deserves modification with enhancement of the amount of compensation to this extent.

The claimants are, thus, held entitled for compensation in the sum of Rs.1,13,000/- (35,000 + 78,000) as against the amount of Rs.85,000/- awarded by the Tribunal. Hence, the

claimants are entitled for further an amount of Rs.28,000/- over and above the amount awarded by the Tribunal.

The Tribunal has allowed interest @ 12% per annum; but in view of the enhancement being allowed herein and looking to the period of litigation, it appears appropriate to allow interest @ 7.5% per annum on the enhanced amount from the date of filing of claim application.

In the result, this appeal succeeds to the extent indicated above and is partly allowed; the impugned award made by the Tribunal is modified and in place of the amount of Rs.85,000/-, the claimant-appellants are awarded compensation in the sum of Rs.1,13,000/-. The claimants shall, therefore, be entitled for further an amount of Rs.28,000/- over and above the amount awarded by the Tribunal and shall be entitled for interest @ 7.5% per annum on this enhanced amount from the date of filing of claim application. The respondent insurer shall deposit the remaining amount now payable within 30 days with the Tribunal that shall issue necessary and appropriate orders for disbursement. In the circumstances of the case, the parties are left to bear their own costs.

(DINESH MAHESHWARI), J.

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